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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA, et
4 al.,

Plaintiffs, New York, N.Y.

5 v. 12 Civ. 1466 (ALC)

6 SIEMENS AG, et al.,

7 Defendants.

8 -----x

9
10 October 14, 2020
10:00 a.m.

11 Before:

12 HON. ANDREW L. CARTER, JR.,

13 District Judge

14 APPEARANCES (via telephone)

15 POLLOCK COHEN LLP

16 Attorneys for Plaintiff Ex Rel Clifford Weiner

17 BY: ADAM LEWIS POLLOCK

STEVE COHEN

JAMES WISEMAN

18 BINDER & SCHWARTZ LLP

19 Attorneys for Defendants Siemens Corp., et al.

20 BY: WENDY HELENE SCHWARTZ

MARTIN TOMAS MURPHY

21 TRAVIS ALEXANDER GONYOU

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(Teleconference established)

THE CLERK: Counsel, I'm just asking that you would state your name prior to speaking each time and when you are not addressing the Court, to please place your phone on mute. We do have a court reporter on the line. We would like an accurate record of today's proceeding. Thank you.

Civil cause for a telephone status conference in case number 12-cv-1466, United States, et al. versus Siemens AG, et al.

Counsel, please state your appearance for the plaintiff.

MR. POLLOCK: Hi. Good morning, your Honor. This is Adam Pollock for the qui tam Relator, Cliff Weiner. I am joined today -- I have the joy of being joined today by my 10-year-old daughter Madeline, who is in fifth grade, and as a minor silver lining of COVID can join for a court proceeding in the middle of the day. I'm also joined by my colleagues Steve Cohen and James Wiseman.

THE CLERK: And for the defendants?

MS. SCHWARTZ: Good morning, your Honor. This is Wendy Schwartz, from Binder & Schwartz, and I'm joined by my colleagues Tom Murphy and Travis Gonyou.

THE CLERK: Thank you.

THE COURT: OK. Good morning, everyone. I hope everyone is safe and healthy.

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1 I've reviewed the parties' letters about how they
2 would like to proceed with this case, and today I want to ask a
3 couple of clarifying questions and then allow the parties to
4 respond to my proposal for how to move forward with this case.

5 Relator has said he would like to amend the complaint.
6 At first Relator mentioned adding a claim for retaliation but
7 has recently indicated that he will not do so. Let me get a
8 clear sense as to the nature of the amendment that Relator
9 would like to make.

10 MR. POLLOCK: Thank you, your Honor, and for the
11 record, this is Adam Pollock.

12 We -- you're correct that we are not -- are not going
13 to be adding a retaliation claim. We would like to -- you
14 know, pride of authorship, we are substitute counsel, we would
15 like to amend the complaint, not to expand the liability but
16 just to clarify and add more details as to the liability and as
17 to the federal funds issue that defendants have raised. We
18 think it would be helpful to write the complaint with our own
19 authorship, as it were.

20 THE COURT: OK. Let me also get some clarification on
21 this. Counsel has not appeared for Siemens AG. Defendants
22 have pointed out in one of their submissions that Siemens AG is
23 a foreign corporation and asserted that Relator has not pleaded
24 facts demonstrating this Court's jurisdiction over Siemens AG.

25 Relator, do you have any response to that, and does

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1 either party have any insight as to whether Siemens AG is going
2 to be appearing prior to service?

3 MR. POLLOCK: My feeling is that, as we go ahead and
4 draft the amended complaint, that we would seriously consider
5 defendants' point as to the foreign parent, Siemens AG, and
6 would consider omitting them, dropping them from an amended
7 complaint.

8 THE COURT: OK. Anything from defendants on that?

9 MS. SCHWARTZ: Your Honor, this is Wendy Schwartz.

10 If Siemens AG were to be served pursuant to the Hague
11 Convention, then it obviously would do whatever it would need
12 to do, but until that point, I do not believe anyone from
13 Siemens AG would be making an appearance. And I do urge
14 Relator to consider dropping that entity. There is no
15 conceivable relation between that entity and these claims.

16 THE COURT: OK. Thank you. Here's my proposal. Then
17 I want to hear from counsel as to any thoughts they have about
18 that.

19 It seems to me that it makes sense to grant defendants
20 leave to move to dismiss for failure to prosecute and perhaps
21 for lack of service, although maybe that's not as important
22 now. Then if Relator's claim survives that motion, we can move
23 on to an amendment of the complaint and service, and then at
24 that point defendants can move to dismiss the complaint, or the
25 amended complaint, on the merits.

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1 Let me hear from the parties regarding that proposal,
2 starting with Relator.

3 MR. POLLOCK: Your Honor, that order makes sense to
4 me. I appreciate that. I think that we can certainly address
5 defendants' arguments as to failure to prosecute and service
6 that they mention in their premotion letter -- I think we have
7 good responses to those -- and so that order of things makes
8 sense to me.

9 THE COURT: OK. What about defendants, what are your
10 thoughts, defendants?

11 MS. SCHWARTZ: Your Honor, that makes sense to us as
12 well. I will say that the lack of service is in our view a
13 very serious issue. And I want to point out, as we have said
14 in our papers and our notices of appearance, that we are here
15 to avoid any misunderstanding about the claims against the
16 Siemens defendants, but there has never been any service of any
17 of the Siemens defendants, and we are not waiving service.

18 THE COURT: OK. All right. So let's go ahead and set
19 a schedule then for the defendants to file their motion to
20 dismiss for failure to prosecute and for lack of service.

21 How soon can the defendants file that motion? Well,
22 let me just give you a date. How about let's have the
23 defendants file that motion in three weeks? Does that work for
24 defense counsel?

25 MS. SCHWARTZ: Your Honor, if I could ask for four

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1 weeks only because I'm about to embark on a week-long
2 arbitration, so my time is limited in the next seven days.

3 THE COURT: All right. That's find. So four weeks
4 for the motion. What date is that, Tara?

5 THE CLERK: November 4th.

6 THE COURT: OK. And then we'll have the plaintiffs
7 respond. Four weeks after that should be when, Tara?

8 THE CLERK: December 8th.

9 THE COURT: OK. And then any reply should be filed by
10 December 22nd.

11 And then once that's decided, if necessary, we'll move
12 on to dealing with an amended complaint and the like.

13 Anything else from the parties?

14 (Pause)

15 OK. We're adjourned. Thank you.

16 MS. SCHWARTZ: Thank you, your Honor.

17 MR. POLLOCK: Thank you, your Honor.

18 (Adjourned)